

405 KAR 18:210. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 784.20(a)(3), 817.121-.122, 917, 30 U.S.C. 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.121-.122, 917, 30 U.S.C. 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures. This administrative regulation differs from 30 CFR 817.121 -.122. Section 3(2) of this administrative regulation, regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992. The federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) of this administrative regulation is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law. Section 3(5)(c) of this administrative regulation allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the cabinet believes the prompt release or return is not inconsistent with the federal regulations. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:010, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request.

Section 1. General Requirements. (1)(a) The permittee shall adopt:

1. Measures consistent with known technology that:

a. Prevent subsidence from causing material damage to the extent technologically and economically feasible;

b. Maximize mine stability; and

c. Maintain the value and reasonably foreseeable use of surface land; or

2. Mining technology that provides for planned subsidence in a predictable and controlled manner.

(b) Nothing in 405 KAR Chapters 7 through 24 shall be construed to prohibit the standard method of room and pillar mining.

(2) If a permittee employs mining technology that provides for planned subsidence in a predicta-

ble and controlled manner, the permittee shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to these structures are not required if:

- (a) The permittee has the written consent of the owners; or
- (b) Unless the anticipated damage would constitute a threat to health or safety, the costs of the measures exceed the anticipated costs of repair.
- (3) The permittee shall comply with all provisions of the approved subsidence control plan prepared pursuant to 405 KAR 8:040, Section 26.

Section 2. Public Notice. (1) The permittee shall mail a notification to all owners and occupants of surface property and structures within the area above the underground workings. Each owner or occupant shall be notified by mail at least ninety (90) days prior to mining beneath his property or structure.

(2) If the notice has been properly given, and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath the property or structure sooner than ninety (90) days after the notice, the permittee shall immediately provide additional written notice to the owner or occupant that the mining will be conducted, but in no case shall mining be conducted beneath the property or structure sooner than thirty (30) days after the additional notice is given unless the owner has expressly waived the thirty (30) day period in writing. The waiver shall be granted after the initial notice required under subsection (1) of this section has been given, and shall be separate from any other waiver, lease, deed, easement, agreement, or other conveyance of property or rights.

(3) The notification shall include, at a minimum:

- (a) Identification of specific areas in which mining will take place;
- (b) Dates that specific areas are anticipated to be undermined; and
- (c) The location or locations where the permittee's subsidence control plan may be examined.

Section 3. Repair of Damage. (1) Repair of damage to surface lands. The permittee shall correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining. The permittee shall promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair is selected, the permittee shall fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee shall compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence related damage. The permittee may provide compensation by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(3) Repair or compensation for damage to other structures. The permittee shall, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subsection (2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage shall include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(4) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information shall be considered by the cabinet.

(5) Adjustment of bond amount for subsidence damage.

(a) If subsidence related material damage to land, structures or facilities protected under subsections (1) through (3) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, until the repair or compensation is completed. If repair or compensation is completed within ninety (90) days of the occurrence of damage, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that subsidence is not complete, or that not all probable subsidence related material damage has occurred to lands or protected structures, and that therefore it would be unreasonable to complete within ninety (90) days the repair of the subsidence related material damage to lands or protected structures.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4, covers the subsidence damage, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the subsidence damage. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required repair or compensation.

Section 4. Buffer Zones. (1) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage capacity of twenty (20) acre-feet or more or bodies of water with a volume of twenty (20) acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, the features or facilities. If the cabinet determines that it is necessary in order to minimize the potential for material damage to the features or facilities previously described in this subsection or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent to the feature, facility, aquifer, or body of water.

(2) If subsidence causes material damage to any of the features or facilities covered by subsection (1) of this section, the cabinet may suspend mining under or adjacent to the features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to the features or facilities.

(3) The cabinet shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

Section 5. Annual Plan of Underground Workings. (1) Within forty-five (45) days after the first day of January following each year in which underground mining activities are conducted, and at any other time upon written request by the cabinet, the permittee shall submit two (2) copies of a detailed plan of the existing and proposed underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, con-

figuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, the boundaries of the permit area, and other information required by the cabinet.

(2) Copies of the maps required to be filed with the Kentucky Office of Mine Safety and Licensing under KRS 352.450 and 352.480 may be submitted to the cabinet to fulfill the requirements of this section, if the maps include all the information required under subsection (1) of this section. (8 Ky.R. 1582; eff. 1-6-83; Am. 24 Ky.R. 747; 2676; eff. 6-10-98; 2563; 3124; 3241; eff. 6-8-2001; TAm eff. 8-9-2007.)